BEFORE THE

IDAHO PUBLIC UTILITIES COMMISSION

CASE NO. IPC-E-01-43

EXHIBIT NO. 6

GREGORY W. SAID

Office of the Secretary
Service Date
April 10, 2001

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY AND ASTARIS LLC FOR APPROVAL OF A LETTER AGREEMENT AMENDING THE ELECTRIC SERVICE AGREEMENT BETWEEN THE PARTIES.	**CASE NO. IPC-E-01-9** **ORDER NO. 28695**

On March 16, 2001, Idaho Power Company ("Idaho Power") filed an Application requesting Commission approval of a Letter Agreement amending the Electric Service Agreement ("ESA") between the Company and Astaris LLC (fka FMC). The ESA dated December 30, 1997, requires Idaho Power to supply electric power to Astaris' phosphate manufacturing facility in Pocatello, Idaho. Astaris also purchases electric power for its Pocatello facility under the terms and conditions set forth in the ESA. According to the Letter Agreement "[d]ue to the recent significant increase in electric power prices the parties mutually desire to amend the [ESA][.]"[1] On March 20, 2001, the Commission issued the Notice of Application, Notice of Modified Procedure, Expedited Deadline for Comments, and Order No. 28678. After reviewing the Application and attached Letter Agreement, the Commission preliminarily found that approval of the Application is in the public interest as the amendment to the ESA will allow 50 MW of reduced load to be made available to all Idaho Power system customers. Order No. 28678 at 3. Based on Idaho Power's request the Commission also found that it was necessary to move expeditiously to review the Application and to process this matter by Modified Procedure on less than 21 days' notice.

In addition to these initial findings the Commission decided to accept written comments, filed on or before Noon MST, March 27, 2001, regarding two specific issues in this case: 1) whether the payments made by Idaho Power to Astaris for purchases of energy should be treated as a purchase power expense and then flowed through Idaho Power's PCA mechanism; and 2) how the costs of the derivative should be treated. *Id.*

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[1] Astaris has decided to change the base material used in its manufacturing process from elemental phosphorus to purified phosphoric acid. This change will allow it to consume less energy at its Pocatello facility and thus may also be a reason for the parties to amend the ESA.

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The Industrial Customers of Idaho Power ("ICIP")[2], the Idaho Irrigation Pumpers Association and the Commission Staff have filed comments. Idaho Power has also filed reply comments.

THE APPLICATION AND LETTER AGREEMENT

The ESA currently provides that Idaho Power furnish Astaris with two large blocks of power. ESA p.4, ¶ 4.2.1. The first block is for 120,000 kilowatts ("kW") per hour and is a "take or pay" block (i.e., Astaris must pay for the power whether it uses it or not). ESA p.5, at ¶ 4.2.2. The second block is for 130,000 kW per hour to be supplied by Idaho Power at Astaris' request. Order No. 27463 at 4-5; ESA p.5, ¶ 4.2.3.

In the Letter Agreement the parties propose to reduce the first block to "no more than 70,000 kW's of energy per hour." LA at p.2, No. 3. However, Astaris shall continue to pay for 120,000 kW of energy per hour under ¶ 4.2.1 of the ESA. *Id.* The difference – 50,000 kW or 50 MW – will be made available to Idaho Power for twenty-four (24) months beginning April 1, 2001 and ending March 31, 2003. Idaho Power will pay Astaris for the 50 MW at projected market rates, over the entire term of the Letter Agreement, minus a 14.5% discount. The total buy-back amount for the 50 MW of power is approximately $140 million over the two years, or about 15.9¢ per kWh. *See* LA, Schedule A. Idaho Power also represents that the 15.9¢ proposed buy-back payment is offset by the Company's continued recovery of the energy charge for the entire 120,000 kW per hour in the first block.

The Letter Agreement also provides for the permanent shut down of furnaces No. 1 and No. 4 at the Astaris facility in Pocatello. *Id.* This Agreement also provides that Idaho Power and Astaris will negotiate in good faith to develop a replacement electrical service agreement for the Pocatello facility, which would become effective after the termination of this Agreement. Finally, Idaho Power states that operations under the Letter Agreement's terms are conditioned on favorable approval by the Idaho Public Utilities Commission. *Id.*

Idaho Power also states that it has purchased a derivative as insurance against rate volatility for the period of time that this matter is pending on Modified Procedure because it will not know if the Application is to be authorized as it requests. The cost of the derivative was approximately $200,000.

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[2] The Industrial Customers of Idaho Power filed a Petition to Intervene into this case

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Idaho Power requests that the Commission issue an Order finding that the payments it makes for buying back power from Astaris be treated as a purchased power expense for purposes of Idaho Power's Power Cost Adjustment ("PCA"); or alternatively, authorize the Company to sell the 50 MW of reduced load "off-system as a non-operating transaction." Application at 2. Idaho Power also requests that the costs of the derivative be recovered through the Company's PCA mechanism.

COMMENTS

Staff Comments

In its comments Staff noted that the prices paid for the Astaris load reduction under the Agreement appear to be lower than reasonably projected forward market prices and comparable on average to prices paid for other resources. Accordingly, Staff recommended that the Agreement be approved as a system resource and that the load reduction be added to the Company's resource portfolio. Staff also recommended that the reasonably incurred costs associated with the Astaris load reduction agreement be passed through the PCA like any other power supply expense.

Staff opposes treatment of the Agreement as a non-system transaction that would accrue benefits solely to an Idaho Power Company affiliate. Consequently, Staff opposes recovery from ratepayers, of derivative costs that protect the affiliate from risk. Staff recommends that the cost recovery of the derivative be denied.

Industrial Customers of Idaho Power

ICIP states that to the extent that this contract is a reasonable and prudent effort on Idaho Power's part to mitigate for the effects of current electric market prices it supports it. ICIP Comments at 2. However, ICIP states that the inclusion of costs of this Agreement in Idaho Power's rates requires the Commission to find that they have been prudently incurred and currently there is insufficient information to make such a finding. *Id.* ICIP also contends that the Letter Agreement is a relatively long-term commitment made in response to an immediate problem, high prices currently in the wholesale power market. Accordingly, ICIP asserts that it is imperative to examine Idaho Power's load resource planning for this time frame to determine or effectively evaluate the need for this power for a two-year time period.[3] *Id.* ICIP also contends that in light of the prices

[3] ICIP raises several questions in its comments: 1) What alternative to a two year contract is available to Idaho Power?; 2) Has Idaho power updated its 2000 resource plan for this time period and if so what resources are available and at what prices?; and, 3) Has Idaho Power conducted an elasticity of demand study and if so what are the results? Comments at 3. Without answers to these questions ICIP contends that it is not possible to comment on the prudence of the two-year Agreement. *Id.*

paid to customers for load reductions in other Idaho Power Programs offering Astaris almost 87 percent of the market price is too generous and may not be necessary or prudent. Comments at 3-4.

Furthermore, ICIP asserts that it is inequitable for Idaho Power to require other industrial customers to bid against each other for curtailment opportunities without requiring Astaris to also do so. *Id.* at 4. To resolve its concerns, ICIP contends that the Commission should require Idaho Power to include Astaris in the bidding program being considered for other industrial customers of Idaho Power. *Id.* at 4. ICIP believes that only if Astaris is required to bid against other industrial customers for the opportunity to reduce consumption will the true clearing price for industrial curtailment be known, inequities eliminated and only the power necessary will be purchased. *Id.*

ICIP also questions why Idaho Power's Application must be approved within such a short time period. ICIP contends that the Commission should only grant interim approval and allow the parties additional time to examine the issues raised and to further comment. *Id.* at 5. Finally, ICIP contends that the request that ratepayers fund the derivative raises more question than it answers and without these answers it would be speculative to assert that the costs of the derivative are prudently incurred and should properly be funded by all of Idaho Power's ratepayers. *Id.* at 5-6.

The Idaho Irrigation Pumpers Association

The Irrigators state that they are generally supportive of programs that can benefit ratepayers by lowering the Company's purchase power costs. Irrigators Comments at 1. The Irrigators contend that although Idaho Power's Letter Agreement with Astaris attempts to accomplish this, the benefits still appear speculative and uncertain. If the Agreement is approved, the Irrigators contend that it would constitute a guaranteed increase of $140 million in PCA costs over the next two years. *Id.* at 2. The Irrigators also question whether Idaho Power should pay Astaris 86.5% of the market price for curtailment when in other programs it pays its customers only 50% of the market price for their load reductions. *Id.* The Irrigators also question the prudence of extending this agreement for two years given Astaris' intention to substantially reduce or cease altogether operations at its Pocatello facilities. *Id.* at 4. The Irrigators also state that the sharing of derivative benefits and costs should be shared on equal basis. *Id.* Finally, to further investigate the issues which it has raised the Irrigators request that the Commission take more time to render a decision on this Application. *Id.*

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Idaho Power Reply Comments

In response to Staff's Comments Idaho Power states that the regulatory process required them to purchase a derivative. Specifically, Idaho Power states it could not make a decision as to how the load reduction of Astaris was to be treated for regulatory purposes until the Commission issued an order making this determination. Accordingly, Idaho Power contends that the cost of the derivative is a regulatory cost that should be recovered through the Company's PCA mechanism. Comments at 1-2. Idaho Power also vehemently opposes the Commission delaying a decision in this case based on ICIP's arguments. *Id.* at 2.

Astaris LLC., Letter

On March 30, 2001, the Commission received a letter from Conley Ward, attorney for Astaris LLC. Mr. Ward states that Astaris has authorized him to inform the Commission that the Company has agreed to pay Idaho Power Company $219,000 to reimburse Idaho Power for the costs of the derivative it purchased in connection with the Letter Agreement.

COMMISSION FINDINGS

This Application represents another energy buy-back proposal from Idaho Power. Under the Letter Agreement, Idaho Power buys back 50 MW of power that Astaris surrenders in order to accelerate the conversion of its manufacturing process. Astaris is compensated for surrendering its contractual right to 50 MW of power and Idaho Power is able to obtain 50 MW of power at a discount from projected market rates.

As a preliminary matter the Commission finds that a decision on this Application should not be delayed as requested by the Industrial Customers of Idaho Power. Because the underlying value of the transaction described in the Letter Agreement is subject to rapid price changes that are occurring in the wholesale power markets and because there is considerable risk in not being able to close all aspects of the transaction if this matter is not decided expeditiously, taking additional time for a decision is not appropriate. Accordingly, the Industrial Customer's request is denied.

The Commission finds that the Letter Agreement has considerable value because it allows 50 MW of reduced load to be made available to serve all Idaho Power system customers during this time of volatile energy market prices and reduced generation capacity due to low water conditions. The Commission also finds the price which Idaho Power will pay Astaris for this reduced load to be reasonable. Idaho Power proposes to pay Astaris an average of 15.9¢ per kWh over the term of the Letter Agreement. When compared to the projected forward market prices this price represents a 14.5% discount and will save Idaho Power Company more than $21,000,000 in purchase power expenses if price projections for purchasing power prove to be accurate. Furthermore, under the Letter Agreement 50 MW will always be available to Idaho Power for a two-year period. The value of this program is thus much greater to the system than the energy sought from other programs that Idaho Power is offering. The Commission finds that this value justifies Idaho Power's decision to pay Astaris an average of 15.9¢ per kWh or 86.5% of the projected market prices over the term of the Letter Agreement rather than a lower level established by a bidding process or some other means as urged by many of the parties. Therefore, after reviewing the record and all the facts, the Commission finds that approval of the Application and attached Letter Agreement is in the public interest. Accordingly, the load reduction it provides shall be added to the Company's portfolio as a system resource.

The Commission finds that prudently incurred payments made by Idaho Power to Astaris for purchases of energy should be treated as a purchase power expense and then flowed through Idaho Power's PCA mechanism. Further, in order to monitor the costs and any benefits the Company shall establish sub-accounts to specifically track the results of this Program. The PCA filing shall also include a separate line to identify costs of this Agreement.

The Commission recently has been informed by Company officials from Astaris that it will pay for the cost of the derivative. Because this resolves the issue of who should be responsible for the costs of the derivative, the Commission need not make any findings regarding the derivative. Simply put the issue is now moot.

O R D E R

IT IS HEREBY ORDERED that the Industrial Customers of Idaho Power's request for the Commission to delay decision in this case is denied.

IT IS FURTHER ORDERED that Idaho Power Company's Application requesting Commission approval of the attached Letter Agreement is approved as a system resource and that the load reduction be added to the Company's resource portfolio.

IT IS FURTHER ORDERED that the reasonably incurred payments made by Idaho Power to Astaris for purchases of energy should be treated as a purchase power expense and then flowed through Idaho Power's PCA mechanism. Further, in order to monitor the costs and any benefits the Company shall establish sub-accounts to specifically track the results of this Program. The PCA filing shall also include a separate line to identify costs of this Agreement.

IT IS FURTHER ORDERED that the issue of whether Idaho Power should recover the costs of the derivative it purchased is moot.

THIS IS A FINAL ORDER. Any person interested in this Order or in interlocutory Orders previously issued in this Case No. IPC-E-01-9 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this Case No. IPC-E-01-9. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 10th day of April 2001.

Paul Kjellander

PAUL KJELLANDER, PRESIDENT

Marsha H. Smith

MARSHA H. SMITH, COMMISSIONER

Dennis S. Hansen

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Jean D. Jewell

Jean D. Jewell
Commission Secretary

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